

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: March 30, 2004
Paper No. 9
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Caregivers Group, Inc.

Serial No. 76324711

Gary L. Jones of Kohrman Jackson & Krantz, P.L.L. for The Caregivers Group, Inc.

Young Oh (Richard) Kim, Trademark Examining Attorney, Law Office 115 (Tomas Vlcek, Managing Attorney).

Before Hairston, Walters and Rogers, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

The Caregivers Group, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register THE CAREGIVERS MARKETPLACE as a trademark for "providing business marketing information in the medical products and services industry."¹ Registration has been

¹ Application Serial No. 76324711, filed October 15, 2001, based on a bona fide intention to use the mark in commerce.

finally refused pursuant to Section 2(e)(1) of the Trademark Act, §1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified services.

Applicant and the Examining Attorney have filed appeal briefs. No oral hearing was requested.

In support of his position that THE CAREGIVERS MARKETPLACE is merely descriptive of "providing business marketing information in the medical products and services business", the Examining Attorney has pointed to portions of a press release announcing applicant's services:

The Caregivers Group, Inc. Launches The Caregivers Marketplace - A Group Purchasing Program for Family Caregivers

The Caregivers Marketplace has teamed up with MetLife to launch the program in early 2002 to 44 million households

Manufacturers and providers can offer product information/rebates/discounts to caregivers through a targeted and wide reaching awareness campaign

Also, the Examining Attorney points to the following question and answer at applicant's website:

What is The Caregivers Marketplace?

The Caregivers Marketplace (TCM) is a group-purchasing plan specifically designed to offer savings to the family caregivers. TCM works with leading manufacturers to negotiate rebates and discounts on carefully selected products and services that caregivers buy on a regular basis, such as nutrition,

incontinence, aids to daily living, bathing supplies, and mobility and home modification equipment. TCM does not sell products - we provide caregivers with a TCM Savings Card to take advantage of savings in the marketplace.

The Examining Attorney also made of record the following definitions from The American Heritage Dictionary of the English Language (3rd ed. 1992):

caregiver: 1. An individual, such as a physician, nurse, or social worker, who assists in the identification, prevention, or treatment of an illness or disability. 2. An individual, such as a parent, foster parent, or head of a household, who attends to the needs of a child or a dependent adult.

Marketplace: 1. An open area or square in a town where a public market or sale is set up. 2. The world of business or commerce. 3. A situation or place in which values and ideas are put forward for debate or recognition; a marketplace for new ideas; the literary marketplace.

Based on the foregoing evidence, the Examining Attorney concludes that THE CAREGIVERS MARKETPLACE is merely descriptive of the identified services because it indicates "the applicant is providing a **marketplace** for manufacturers to reach **caregivers**." (emphasis in original) (First office action, p. 2).

Applicant, in urging reversal of the refusal to register, contends that the phrase THE CAREGIVERS MARKETPLACE is incongruous because applicant's services

will not involve the operation of a marketplace per se, that is, applicant will not be selling goods and services to caregivers through its program. Rather, applicant's program will serve as a conduit whereby manufacturers/providers of goods and services of interest to caregivers may offer information about such goods and services, as well as rebates/discounts on purchases. Thus, according to applicant, its mark is at most suggestive of its services.

The Examining Attorney bears the burden of showing that a mark is merely descriptive of the relevant goods or services. In re Merrill Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). A mark is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a mark describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather it is sufficient if the mark describes a

significant attribute or idea about them. Moreover, whether a mark is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the mark would have to the average purchaser of the goods or services because of the manner of its use. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

On the other hand, a mark is suggestive if, when the goods or services are encountered under the mark, a multistage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. In re Abcor Development Corp., supra at 218. As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of into which category a mark falls frequently being a difficult matter involving a good measure of subjective judgment. In re Atavio, 25 USPQ2d 1361 (TTAB 1992) and In re TMS Corp. of the Americas, 200 USPQ 57 (TTAB 1978).

In the present case, we find that the Examining Attorney has not established that, when applied to

applicant's services, the phrase THE CAREGIVERS MARKETPLACE directly conveys information about the nature of the services. We believe that some mental processing would be required for prospective customers of applicant's services to readily perceive the merely descriptive significance of THE CAREGIVERS MARKETPLACE as it pertains to providing business marketing information in the medical products and services business.

Applicant concedes that the individual words that comprise applicant's mark have descriptive significance when used in connection with the services. However, considering the mark as a whole, we find that the combination of the words in the mark herein results in certain ambiguities such that no single meaning for the phrase is immediately apparent. See *In re Recovery, Inc.*, 196 USPQ 830 (TTAB 1977)[Board reversed refusal to register RECOVERY for group therapy and self-help aftercare services because term "appears, at first blush, to possess a descriptive significance" but requires mental processing to explain significance].

As we see from applicant's press release and web pages, applicant has two classes of customers. One class of customers is caregivers who will use applicant's "TCM card" and "group purchasing plan" to obtain discounted

medical products and services and/or information about such products and services. The other class of customers is companies/organizations which manufacture medical products and provide other services to caregivers. These companies/organizations do not enroll in applicant's program as such, but rather, provide information about their products and services and offer purchaser incentives, e.g., rebates, presumably for purposes of getting assessments from applicant's members.

Applicant's mark THE CAREGIVERS MARKETPLACE has potentially different connotations to these classes of customers, and is therefore ambiguous when used in connection with "providing business marketing information in the medical products and services business." To caregivers, the mark may connote that applicant's business marketing information services are designed to assist them in the selection of home health products and services in the marketplace. To companies and organizations which manufacture products and provide other services to caregivers, the mark may connote that applicant's business marketing information services are designed to aid them in selling their goods and services in the marketplace. In view of the ambiguous nature of applicant's mark, we find

that it is not merely descriptive of the identified services.

Finally, we recognize that we must resolve whatever doubt we may have regarding the merely descriptive character of the mark in favor of applicant and the mark should be published for opposition. In re Rank Organization Ltd., 222 USPQ 324, 326 (TTAB 1984) and cases cited therein.

Decision: The refusal to register under Section 2(e)(1) of the Act is reversed.